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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/963,360	09/24/2001	Gerald J. Ware	WAR1394.07A	8250
8156	7590	11/09/2006	EXAMINER BECKER, DREW E	
JOHN P. O'BANION O'BANION & RITCHEY LLP 400 CAPITOL MALL SUITE 1550 SACRAMENTO, CA 95814			ART UNIT 1761	

DATE MAILED: 11/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/963,360	Applicant(s) WARE, GERALD J.	
	Examiner Drew E. Becker	Art Unit 1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 August 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 31-33,35-39,59-61 and 69-80 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 31-33,35-39,59-61 and 69-80 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 31-33, 35-39, 69-76, and 79-80 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claims 31 and 79 recite a bed of "granular support media". However, there does not appear to any support for this limitation in the application.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 59-61, 69-74, and 76-78 are rejected under 35 U.S.C. 103(a) as being unpatentable over Oates et al [Pat. No. 3,214,844] in view of JP 09113132A.

Oates et al teach a drying apparatus comprising a housing with three zones (Figure 1, #10, 22, 24, 26), support substrates on a conveyor (Figure 3, #58), first, second, and

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third heat sources (Figure 2, #30), means for recycling heated gas (Figure 2), the gas being air which inherently includes nitrogen, an end sprocket which flips the support substrates and separates the food from them (Figure 1, #60), and an air velocity of 400 ft/min (column 4, line 30). Phrases such as "air heated to a temperature..." are merely preferred methods of using the claimed apparatus. Oates et al do not recite an ultrasound source. JP 09113132A teaches a food drying apparatus comprising an ultrasound source (abstract). It would have been obvious to one of ordinary skill in the art to incorporate the ultrasound source of JP 09113132A into the invention of Oates et al since both are directed to drying devices, since Oates et al already included hot gas burners to heat the air (Figure 2, #30), and since JP 09113132A teaches that combination of ultrasonic energy and conventional drying provided superior drying performance (abstract).

5. Claims 59-61, 69-74, and 76-78 are rejected under 35 U.S.C. 103(a) as being unpatentable over Scott [Pat. No. 4,419,834] in view of JP 09113132A.

Scott teaches a drying apparatus comprising a housing with three compartments (Figure 1, #26, 28, 30), support substrates in the form of vanes (Figure 2a, #64), a conveyor (Figure 1, #32), first, second, and third heat sources in the form of heat exchange coils or gas burners (Figure 2, #48; column 3, lines 30-56), means for recycling heated gas (Figure 2), the gas being air which inherently includes nitrogen, means for separating the food from the substrates (Figure 1, #72), the second compartment having two zones which share recycled air (Figure 1, #28), the capability of using air at 600 ft/min (column 4, line 50), and temperatures of 150-500°F (column 5,

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line 46). Phrases such as "at a rate of between..." are merely preferred methods of using the claimed apparatus. Oates et al do not recite an ultrasound source. JP 09113132A teaches a drying apparatus comprising an ultrasound source (abstract). It would have been obvious to one of ordinary skill in the art to incorporate the ultrasound source of JP 09113132A into the invention of Scott since both are directed to drying devices, since Scott already included hot gas burners to heat the air (Figure 2, #48), and since JP 09113132A teaches that combination of ultrasonic energy and conventional drying provided superior drying performance (abstract).

6. Claims 31-33, 35-36, 38-39, and 79-80 are rejected under 35 U.S.C. 103(a) as being unpatentable over Scott, in view of JP 09113132A, as applied above, and further in view of Bussmann et al [Pat. No. 6,000,144].

Scott and JP 09113132A teach the above mentioned components. Scott also teaches vanes (Figure 2a, #64). Scott and JP 09113132A do not recite a bed of granular support media. Bussmann et al teach a drying device using a bed of granular support media (abstract). It would have been obvious to one of ordinary skill in the art to incorporate the plurality of spheres of Bussmann et al into the invention of Scott, in view of JP 09113132A, since all are directed to drying devices, since Scott already included vanes capable of holding the granular material (Figure 2a, #64), and since Bussmann et al teach that it is old to employ a bed of granular support media to form a drying bed which provides for even application of particulate food products to be dried over the drying bed, thereby facilitating faster drying of the products (column 1, lines 4-60).

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7. Claims 31-33, 35, 37-39, and 79-80 are rejected under 35 U.S.C. 103(a) as being unpatentable over Oates et al, in view of JP 09113132A, as applied above, and further in view of Bussmann et al.

Oates et al and JP 09113132A teach the above mentioned components. Oates et al also teach a container (Figure 3, #58). Oates et al and JP 09113132A do not recite a bed of granular support media. Bussmann et al teach a drying device using a bed of granular support media (abstract). It would have been obvious to one of ordinary skill in the art to incorporate the plurality of spheres of Ware into the invention of Scott, in view of JP 09113132A, since all are directed to drying devices, since Scott already included a container capable of holding the granular material (Figure 3, #58), and since Bussmann et al teach that it is old to employ a bed of granular support media to form a drying bed which provides for even application of particulate food products to be dried over the drying bed, thereby facilitating faster drying of the products (column 1, lines 4-60).

8. Claim 75 is rejected under 35 U.S.C. 103(a) as being unpatentable over Oates et al, in view of JP 09113132A, as applied above, and further in view of Geromini et al [Pat. No. 5,911,488].

Oates et al and JP 09113132A teach the above mentioned components. Oates et al and JP 09113132A do not recite a vibrating perforated table. Geromini et al teach a drying device comprising a vibrating perforated table (column 2, line 62). It would have been obvious to one of ordinary skill in the art to incorporate the vibrating table of Geromini et al into the invention of Oates et al, in view of JP 09113132A, since all are

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directed to drying devices, since Oates et al likely would have required some means to ensure that the cereal was completely emptied from the containers (Figure 1, #58), and since the vibrating table of Geromini et al would have helped ensure even heating and easy removal of all the cereal grains of Oates et al by preventing them from becoming stuck, or stationary, within the containers (Figure 1, #58).

9. Claim 75 is rejected under 35 U.S.C. 103(a) as being unpatentable over Scott, in view of JP 09113132A, as applied above, and further in view of Geromini et al [Pat. No. 5,911,488].

Scott and JP 09113132A teach the above mentioned components. Scott and JP 09113132A do not recite a vibrating perforated table. Geromini et al teach a drying device comprising a vibrating perforated table (column 2, line 62). It would have been obvious to one of ordinary skill in the art to incorporate the vibrating table of Geromini et al into the invention of Scott, in view of JP 09113132A, since all are directed to drying devices, since Scott likely would have required some means to ensure that the cereal was completely emptied from the conveyor, and since the vibrating table of Geromini et al would have helped ensure even heating and easy removal of all the cereal grains of Scott by preventing them from becoming stuck, or stationary, between the conveyor vanes.

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. DE 3934500A, RU 2088096C1, and Pikus [Pat. No. 6,125,549] teach drying devices.


Response to Arguments

11. Applicant's arguments with respect to claims 31-33, 35-39, 59-61, and 69-80 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew E. Becker whose telephone number is 571-272-1396. The examiner can normally be reached on Mon.-Fri. 8am to 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


DREW BECKER
EXAMINER
11/7/06